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Supreme Court, U.S.
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No. 08-1337

IN THE

Supreme Court of the United States

THOMAS L. KNIGHT,
Petitioner,

v.

CHICAGO TRIBUNE COMPANY, a corporation,
MAURICE POSSLEY and KEN ARMSTRONG,
Respondents.

On Petition for a Writ of Certiorari to the Appellate Court of Illinois

BRIEF FOR THE RESPONDENTS IN OPPOSITION

CHARLES L. "CHIP" BABCOCK *
JOHN M. JACKSON
JACKSON WALKER L.L.P.
1401 McKinney Street,
Suite 1900
Houston, Texas 77010
(713) 752-4200

* Counsel of Record

WILSON-EPES PRINTING CO., INC – (202) 789-0096 – WASHINGTON, D. C. 20002

QUESTIONS PRESENTED

1. Whether the Court should grant the petition for writ of certiorari even though: (a) that petition was filed in violation of the automatic stay imposed due to Respondent Chicago Tribune Company's bankruptcy petition; (b) Petitioner has failed to seek relief from the automatic stay; and (c) the automatic stay extends to Respondents Maurice Possley and Ken Armstrong because Respondent Chicago Tribune Company is the real party in interest?

2. Whether the Court should overturn almost half a century of settled jurisprudence and overrule *New York Times v. Sullivan* despite the fact that there are independent and adequate state grounds to affirm?

CORPORATE DISCLOSURE STATEMENT

Pursuant to Supreme Court Rule 29.6, Respondent Chicago Tribune Company states that its parent company is Tribune Company. Tribune Company, a publicly-traded company, owns more than 10% of Chicago Tribune Company's stock.

TABLE OF CONTENTS

	Page
QUESTIONS PRESENTED	i
CORPORATE DISCLOSURE STATEMENT	ii
TABLE OF CONTENTS	iii
TABLE OF AUTHORITIES	iv
STATEMENT OF THE CASE	1
ARGUMENT	2
I. THE PETITION FOR CERTIORARI SHOULD BE DENIED BECAUSE IT WAS FILED IN VIOLATION OF THE AUTOMATIC STAY	2
A. The Petition for Certiorari is Void as to Chicago Tribune Company Because it was Filed in Violation of the Automatic Stay	2
B. The Automatic Stay Should Be Extended to Respondents Possley and Armstrong because Chicago Tribune Company is the Real Party in Interest.	4
II. *NEW YORK TIMES CO. v. SULLIVAN* IS WELL-SETTLED LAW THAT SHOULD NOT BE DISTURBED	7
III. THE LOWER COURT'S JUDGMENT RESTS ON INDEPENDENT AND ADEQUATE STATE GROUNDS	8
CONCLUSION	10

TABLE OF AUTHORITIES

FEDERAL CASES — Page

48th St. Steakhouse, Inc. v. Rockefeller Group, Inc. (In re 48 St. Steakhouse, Inc.), 835 F.2d 427 (2d Cir. 1987) 3
A.H. Robins Co. v. Piccinin, 788 F.2d 994 (4th Cir. 1986) 5, 6
Albany Partners, Ltd. v. Westbrook (In re Albany Partners, Ltd.), 749 F.2d 670 (11th Cir. 1984) 3
Bronson v. United States, 46 F.3d 1573 (Fed. Cir. 1995) 4
In re Continental Airlines, 177 B.R. 475 (D. Del. 1993) 5
Easley v. Pettibone Mich. Corp., 990 F.2d 905 (6th Cir. 1993) 3
Job v. Calder (In re Calder), 907 F.2d 953 (10th Cir. 1990) 3
Jones v. Garcia (In re Jones), 63 F.3d 411 (5th Cir. 1995) 3, 4
Kalb v. Feuerstein, 308 U.S. 433 (1940) 3
In re Lomas, 117 B.R. 64 (S.D.N.Y. 1990) ... 5
Lynch v. Johns-Manville Sales Corp., 710 F.2d 1194 (6th Cir. 1983) 4, 5
Mangual v. Rotger-Sabat, 317 F.3d 45 (1st Cir. 2003) 7
Masson v. New Yorker Magazine, Inc., 501 U.S. 496 (1991) 8
In re Metal Center, 31 B.R. 458 (D. Conn. 1983) 6
New York Times Co. v. Sullivan, 376 U.S. 254 (1964) 7, 8, 9
In re North Star Contracting Corp., 125 B.R. 368 (S.D.N.Y. 1991) 5

TABLE OF AUTHORITIES—Continued

Page

Ollman v. Evans, 750 F.2d 970 (D.C. Cir. 1984) 7, 8
In re Schwartz, 954 F.2d 569 (9th Cir. 1992) 3
In re Siciliano, 13 F.3d 748 (3d Cir. 1994) .. 3
Soares v. Brockton Credit Union (In re Soares), 107 F.3d 969 (1st Cir. 1997) 3

STATE CASES

Knight v. Chicago Tribune Co., 385 Ill. App. 3d 347 (Ill. App. Ct. 2008) 2, 9

FEDERAL STATUTES

11 U.S.C. § 362(a) 2, 3, 4
28 U.S.C. § 1257(a) 8

STATE STATUTES

The Illinois Business Corporation Act of 1983, 805 ILCS 5 *et seq* 6

MISCELLANEOUS

Rodney A. Smolla, Law of Defamation 2:1, 3 (2d ed. 2009) 7

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On Petition for a Writ of Certiorari to the Appellate Court of Illinois

BRIEF FOR THE RESPONDENTS IN OPPOSITION

STATEMENT OF THE CASE

In this defamation case, Petitioner Thomas L. Knight sued Respondent Chicago Tribune Company and two of its reporters, Respondents Maurice Possley and Ken Armstrong, for allegedly publishing defamatory statements about him. App. 4, 7. Following a trial, the jury answered special interrogatories finding that the challenged statements were not defamatory and that Petitioner (then Plaintiff) failed to prove actual malice. App. 34, 48-50.

On appeal, the Illinois Court of Appeals considered three points of error raised by Petitioner, all of which are based on Illinois evidence or procedural law.

App. 2, 16-22. On those issues, the Court of Appeals held (1) that any error in admitting evidence of prior negative publicity was not reversible error; (2) comments by counsel for the newspaper and reporters during closing argument that the prosecutor kept innocent men in prison for years did not require reversal; and (3) any error in refusing to give certain jury instructions proposed by Petitioner was not reversible error. *Knight v. Chicago Tribune Co.*, 385 Ill.App.3d 347, 358 (Ill. App. Ct. 2008); App. 16-22.

On December 8, 2008, Respondent Chicago Tribune Company filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the District of Delaware. Respondent Chicago Tribune Company's chapter 11 case number is 08-13152. Respondent's chapter 11 case has been administratively consolidated with that of its parent company, Tribune Company, under case number 08-13141, and is pending before Chief United States Bankruptcy Judge Kevin J. Carey.

On January 28, 2009, the Supreme Court of Illinois denied Petitioner's request for leave to file an appeal. App. 47.

ARGUMENT

I. THE PETITION FOR CERTIORARI SHOULD BE DENIED BECAUSE IT WAS FILED IN VIOLATION OF THE AUTOMATIC STAY.

A. The Petition for Certiorari is Void as to Chicago Tribune Company Because it was Filed in Violation of the Automatic Stay.

The automatic stay of section 362(a) of the Bankruptcy Code operates as an injunction prohibit-

ing, in relevant part, " . . . the continuation. . . of any judicial, administrative, or other action or proceeding against the debtor . . . " and "any act to obtain possession of property of the estate or to exercise control over property of the estate." 11 U.S.C. § 362(a)(1), (3). The prevailing rule, including in the Third Circuit where Respondent's chapter 11 case is pending, is that actions taken in violation of the automatic stay, including judicial proceedings, are void ab initio, and without legal effect. *See, e.g.*, *Soares v. Brockton Credit Union* (*In re Soares*), 107 F.3d 969, 976 (1st Cir. 1997); *In re Siciliano*, 13 F.3d 748, 750 (3d Cir. 1994); *In re Schwartz*, 954 F.2d 569, 571 (9th Cir. 1992); *Job v. Calder* (*In re Calder*), 907 F.2d 953, 956 (10th Cir. 1990) (*per curiam*); 48th St. *Steakhouse, Inc. v. Rockefeller Group, Inc.* (*In re 48 St. Steakhouse, Inc.*), 835 F.2d 427, 431 (2d Cir. 1987); *Albany Partners, Ltd. v. Westbrook* (*In re Albany Partners, Ltd.*), 749 F.2d 670, 675 (11th Cir. 1984). This doctrine stems from the Supreme Court decision in *Kalb v. Feuerstein*, 308 U.S. 433 (1940), in which the Court held that the state court's order of a real property foreclosure was "beyond its power, void, and subject to collateral attack", in light of the debtor's petition for relief under the prior Bankruptcy Act.

The minority view is that unauthorized post-petition proceedings are merely "voidable," but the distinction is largely a semantic one. *See Easley v. Pettibone Mich. Corp.*, 990 F.2d 905, 910-11 (6th Cir. 1993) ("If we are to give effect to the statutory authority to annul a stay, such actions can only be described as invalid and voidable, since void actions are incapable of later cure or validation."). *See also Jones v. Garcia* (*In re Jones*), 63 F.3d 411, 412 and

n.3 (5th Cir. 1995); *Bronson v. United States*, 46 F.3d 1573, 1578 (Fed. Cir. 1995).

This distinction is not relevant here because Petitioner took no action to seek relief from the automatic stay from the Bankruptcy Court prior to filing his petition for certiorari, nor has he taken any action to validate or ratify his violation of the automatic stay, *i.e.*, by seeking an annulment of the automatic stay from the Bankruptcy Court. The petition for certiorari was filed in violation of the automatic stay of 11 U.S.C. § 362(a) applicable to Respondent Chicago Tribune Company and is therefore void and without effect. For the foregoing reasons, Respondent Chicago Tribune Company respectfully requests that this Court deny the petition.

B. The Automatic Stay Should Be Extended to Respondents Possley and Armstrong because Chicago Tribune Company is the Real Party in Interest.

As a general rule, the automatic stay of section 362(a) only applies to debtors and does not apply to actions against non-debtor parties. The purposes of the stay, to protect the debtor from harassment and to preserve the property of the estate to permit orderly distribution, are not typically implicated by proceedings against a non-debtor. Thus, a lawsuit brought initially against multiple defendants, including the debtor, may still proceed against the non-debtor co-defendants after the debtor files bankruptcy. *See, e.g., Lynch v. Johns-Manville Sales Corp.*, 710 F.2d 1194, 1196 (6th Cir. 1983) (refusing to extend the stay to co-defendant corporations in asbestos lawsuits, stating that the stay is not ordinarily extended to "entities such as sureties, guaran-

tors, co-obligors, or others with a similar legal or factual nexus to the chapter 11 debtor").

However, in *A.H. Robins Co. v. Piccinin*, 788 F.2d 994, 999 (4th Cir. 1986), the Fourth Circuit created an exception to the general rule, permitting an extension of the automatic stay to non-debtors when, among other things, "there is such identity between the debtor and the third-party defendant that the debtor may be said to be the real party defendant and that a judgment against the third-party defendant will in effect be a judgment against the debtor." Several courts have agreed that an "identity of interest" is shown when the debtor's employee or principal in entitled to indemnity, because a judgment against the non-debtor defendant will directly affect the debtor's assets. *See, e.g., In re Continental Airlines*, 177 B.R. 475, 481 (D. Del. 1993) (holding that bankruptcy court had authority to extend automatic stay to shareholders' class action lawsuits against directors and officers of debtor); *In re North Star Contracting Corp.*, 125 B.R. 368, 370-71 (S.D.N.Y. 1991) (holding that state court action by former employee against debtor's president violated automatic stay); *In re Lomas*, 117 B.R. 64, 68 (S.D.N.Y. 1990) (holding that creditor's suit against debtor's officers was properly stayed).

In this case, such an identity of interest exists between Respondent Chicago Tribune Company and the individual respondents. The individual respondents are each current or former employees of Chicago Tribune Company and were acting within the scope of their employment in reporting and publishing the alleged defamatory statements at issue in this case. App. 4. Respondent Chicago Tribune Company provides its present and former

directors, officers, employees, and agents with broad indemnity against liability and loss suffered and expenses (including attorneys' fees) incurred in connection with any threatened, pending, or completed action, suit, or proceeding, by reason of the fact that such persons are or were serving as a director, officer, employee, or agent of the company.[1] To refuse application of the automatic stay in a situation where the third-party defendant is entitled to indemnity from the debtor, the Fourth Circuit held in *Piccinin*, defeats the very purpose and intent of the Code in providing the stay. *Id.* at 999 (citing *In re Metal Center*, 31 B.R. 458, 462 (D. Conn. 1983) ("[W]here . . . a debtor and a nondebtor are so bound by statute or contract that the liability of the nondebtor is imputed to the debtor by operation of law, then the Congressional intent to provide relief to debtors would be frustrated by permitting indirectly what is expressly prohibited by the Code.")).

Accordingly, for the foregoing reasons, the automatic stay that is applicable to Respondent Chicago Tribune Company should be extended to the individual respondents. To the extent that this Court does not dismiss the petition for certiorari on the merits, Chicago Tribune Company and the individual

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[1] Pursuant to its Certificate of Incorporation, Chicago Tribune Company has indemnified its directors, officers, employees, or agents to the "fullest extent permitted by applicable law" in connection with any actual or threatened action, suit, or proceeding against them based on their to the company. The Illinois Business Corporation Act of 1983, 805 ILCS 5 *et seq.*, permits an Illinois corporation to provide such indemnification to directors, officers, employees, or agents "if such person acted in good faith and in a manner he or she reasonably believed to be in, or not opposed to the best interests of the corporation." 805 ILCS 5/8.75.

respondents respectfully request that this Court stay all further proceedings relating to the petition for certiorari until such time as the automatic stay expires.

II. *NEW YORK TIMES CO. V. SULLIVAN* IS WELL-SETTLED LAW THAT SHOULD NOT BE DISTURBED.

Petitioner argues that the Court should overturn decades of well-settled defamation law by overruling *New York Times Co. v. Sullivan*, 376 U.S. 254 (1964). In so doing, Petitioner seeks to downplay the gravity of his request by repeatedly characterizing the relief sought as a mere "adjustment" to *Sullivan*. Pet. 9-10. There can be little dispute, however, that Petitioner is asking the Court to turn decades of settled defamation law on its head by overruling an opinion that has been repeatedly hailed by commentators and case law as the Court's seminal decision in the law of defamation. *See, e.g.*, Rodney A. Smolla, Law of Defamation 2:1, 3 (2d ed. 2009) ("*New York Times Co. v. Sullivan* is the starting point for all modern discussion concerning the American law of defamation. The case revolutionized the law of defamation by holding, for the first time, that the traditional tort rules governing the law of libel were subject to the overriding constraints of the first amendment."); *Mangual v. Rotger-Sabat*, 317 F.3d 45, 65 (1st Cir. 2003) ("The seminal *New York Times* case contains several requirements that constrain libel law when the challenged statement is about a public official."); *Ollman v. Evans*, 750 F.2d 970, 975 n. 7 (D.C. Cir. 1984) ("*New York Times Co. v. Sullivan*, 376 U.S. 254 (1964), was, of course, the seminal case in which the Court first imposed constitutional constraints on state libel laws by preventing public officials from

securing libel verdicts unless they could prove by clear and convincing evidence that the challenged statement was made with knowledge of its falsity or in reckless disregard of its truth or falsity.").

According to Petitioner, his proposed sea change in defamation law is warranted by the manner in which media coverage has evolved since *New York Times Co. v. Sullivan* was decided. Pet. 7-8. Although Petitioner's argument implies that the Court has not had an opportunity to consider *New York Times Co. v. Sullivan* in forty-five years (Pet. 6-7), that is simply not the case. Indeed, the Court reaffirmed *New York Times Co. v. Sullivan* in *Masson v. New Yorker Magazine, Inc.* 501 U.S. 496, 510-511 (1991), just eighteen years ago.

Further, notwithstanding Petitioner's argument to the contrary, the fact that *Sullivan* has been undisturbed for forty-five years militates overwhelmingly against granting the Petition. For decades, courts throughout the country have relied upon *Sullivan* as a bedrock principle of defamation law. *Sullivan* has been positively cited over 5,500 times by courts across the nation since it was handed down. Simply stated, there is no reason for the Court to throw out decades of well-settled defamation jurisprudence, particularly on this record as shown below.

III. THE LOWER COURT'S JUDGMENT RESTS ON INDEPENDENT AND ADEQUATE STATE GROUNDS.

Under 28 U.S.C. § 1257(a), the Court lacks jurisdiction over the judgment below because it is based on independent and adequate state law grounds. Following a jury trial, in addition to answering a special interrogatory finding that there was no actual

malice, the jury also determined that the challenged statements were not defamatory. App. 15, 34, 48-50. Based on these findings, the jury returned a general verdict in favor of Defendants. App. 15, 45. Accordingly, because the jury found that the challenged statements were not defamatory, the jury would have returned a verdict in Respondents' favor even under the "adjusted" *Sullivan* standard proposed by Petitioner.

Similarly, the opinion entered by the Illinois Court of Appeals also rests upon independent and adequate state law grounds. App. 1-22. The Illinois Court of Appeals' opinion addressed three points of error raised by Petitioner, all of which are based on Illinois evidence or procedural law. App. 2, 16-22. On those issues, the Court of Appeals held (1) that any error in admitting evidence of prior negative publicity was not reversible error; (2) comments by counsel for the newspaper and reporters during closing argument that the prosecutor kept innocent men in prison for years did not require reversal; and (3) any error in refusing to give certain jury instructions proposed by Petitioner was not reversible error. *Knight v. Chicago Tribune Co.*, 385 Ill.App.3d 347, 358 (Ill. App. Ct. 2008); App. 16-22. The Court of Appeals then went on to dismiss summarily Petitioner's argument that "the law [*New York Times Co. v. Sullivan*] should change to permit him to prevail without clear and convincing evidence of actual malice." *Id.* at 359; App. 21-22. In that context, the Court of Appeals remarked, importantly for purposes of this issue, that *"[a]ll of the alleged errors [Petitioner] found had no bearing on the issue of actual malice."* *Id.* (emphasis added). In short, as the Court of Appeals correctly concluded, Petitioner failed to

present it with a federal issue and, consequently, no federal issue is presented here.

CONCLUSION

Wherefore, Respondents pray that the Court deny the request for a petition for writ of certiorari in this case or, in the alternative, stay all further proceedings relating to the petition until such time as the automatic stay imposed due to Respondent Chicago Tribune Company's bankruptcy has expired.

Respectfully submitted,

CHARLES L. "CHIP" BABCOCK *
JOHN M. JACKSON
JACKSON WALKER L.L.P.
1401 McKinney Street,
Suite 1900
Houston, Texas 77010
(713) 752-4200

* Counsel of Record